IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.A.No.73 DBA of 1997
Date of decision:18.5.2007

State of Haryana

…..Appellant

v.

Naresh Pal and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE S.N.AGGARWAL

Present: Mr. JS Toor, Addl.A.G.Haryana, for the appellant.

Mr. Gorakh Nath, Advocate for the respondents.

Mr. SS Dinarpur, Advocate, for the complainant.

JUDGMENT:

The State challenges acquittal of the respondents of the charges under sections 302/326/325/324/323/148/149 IPC.

FIR was registered on the statement of respondent No.1 Naresh Pal on 23.1.1992, to the effect that on account of flow of water to the street, Joginder Singh assaulted Smt.Lachhmi and Smt.Parkasho. Sarwan Singh, deceased armed with 'gandasi', Surjan Singh PW11 armed with 'lathi', Jarnail Singh PW12 armed with 'lathi', Dayal Singh armed with 'barchha', Avtar Singh, Raghbir Singh and Dharma armed with 'lathis' came to the spot and

started abusing the womenfolk. Ram Lal, Ram Nath, Hukam Chand and Bansi Lal came in the street. Joginder Singh came with a gun and hit Naresh Pal on the right leg. He fired another shot which hit the fingers of right hand and chest of Naresh Pal. Sarwan Singh gave 'gandasi' blow on the left side of head of Ram Lal. Surjan Singh gave 'gandasi' blow on the right arm of Ram Lal and Dayal Singh son of Ram Kishan gave 'barchha' blow on the head of Ram Nath. Avtar Singh gave 'lathi' blow on the right hand of Ram Nath. Rattan Singh gave 'lathi' blow on his right leg. Raghbir Singh gave 'lathi' blow on the head of Hukam Chand. Dharma gave 'lathi' blow on the right arm of Hukam Chand. Sant Ram gave 'lathi' blow to Bansi Lal. On alarm being raised, Jai Singh and Ram Chand also came to the place of occurrence. In self defence, they also gave injuries to Joginder Singh. This statement was recorded by ASI Gurdial Singh PW15 at 10.30 AM on 23.1.1992, on the basis of which case was registered under sections 323/324/148/149/307 IPC against Joginder Singh, Dayal Singh, Jarnail Singh, Avtar Singh, Surjan Singh, Sant Ram, Rattan Singh, Raghbir Singh and Dharma. After investigation, they were sent up for trial in Sessions Case No.17 of 1992. After considering the evidence, they were acquitted vide judgment dated 23.2.1996 by the Sessions Judge, Kurukshetra. The said judgment has become final.

A cross case was registered against the respondents – Naresh Pal, Ishwar, Hukam Chand, Ram Nath, Ram Lal, Shiv Kumar, Anil Kumar, Bansi Lal, Pawan Kumar and Ram Kumar, on the statement of Surjan Singh PW11 recorded by ASI Gurdial Singh PW15, inter-alia, alleging assault on Sarwan Singh, who died in the PGI, Chandigarh on 30.1.1992. Version given by Surjan Singh in his statement Ex.DA is to the effect that on 23.1.1992 at 9 AM, he was talking to Sucha Singh in the street in front of Cooperative store. Rattan Singh, Bhura and Gurmail Singh were standing. Rattan Singh was telling Bhura that he should pay money towards rent of water of tubewell. Bhura said that he will not pay money as he had opposed him in the election. Gurmail Singh insisted that money should be paid on which Bhura gave a slap to him. Ram Lal, Pawan, Bansi Lal, Ram Nath, Hukma, Naresh alias Neshi, Ishwar armed with 'gandasis', Leela and Shibba armed with 'lathis' also caused injuries. Shibba inflicted 'lathi' blow on left hand of of Surjan Singh. On alarm being raised, Rattan Singh and Sucha Singh also came. In self defence, they caused injuries to Hukma etc. Amarjit Singh and Dev Singh brought the injured to the hospital at Shahbad. Sarwan Singh and Gurmel Singh were referred to PGI.ASI Gurdial Singh visited the hospital and obtained the opinion of the doctor and recorded the statement of Surjan Singh. After recording the statement, he conducted investigation

without registering a separate FIR. On 31.1.1992 at 1 AM, he received a message from PGI Chandigarh that Sarwan Singh had died. He went to PGI, prepared inquest report and sent the dead body for post mortem examination. He arrested the accused. Ram Nath, accused made a disclosure statement leading to recovery of 'gandasi'. Hukam Chand accused made a disclosure statement and got a 'gandasi' recovered. Ram Nath also got a 'gandasi' recovered. During interrogation, Pawan Kumar got a 'gandasi' recovered. Bansi Lal accused also got a 'gandasi' recovered. Thereafter, during interrogation, Naresh Pal got a 'gandasi' recovered. Ishwar Singh also got a 'gandasi' recovered. After completing investigation, the accused were challaned.

The prosecution examined PW1 Dr.NC Mureja, PW2 Mukesh Kumar, draftsman, PW3 Dr. Samrat Harsh, PW4 Dr. Alok Gupta, PW5 Dr. Dalbir Singh, PW6 HC Amrit Lal, PW7 HC Banarsi Dass, PW8 Constable Surinder Singh, PW9 Malak Singh ASI, PW10 Constable Jiwna Ram, PW11 Surjan Singh, PW12 Jarnail Singh, PW13 Gurmel Singh, PW14 Constable Satish Kumar, PW15 ASI Gurdial Singh and PW16 Surender Singh Inspector.

The accused denied the prosecution allegations and reiterated the cross version recorded on the statement of Naresh Pal in the form of FIR No.21 dated 23.1.1992.

PW3 Dr. S.H.Sehgal medico legally examined Sarwan Singh, deceased on 231.1992 at 10 AM and found following injuries:

> "1. An incised wound 7 cm x 1 cm on skull, wound starting from 3 cm right of occipital parietal protuberance upward and 6 cm from the pinna of right ear. Wound was bone deep with swelling around it was present. Fresh bleeding was present on cleaning.
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> 2. An incised wound 5 cm x 0.6 cm on left side of skull. 2 cms lateral to injury No.1. Wound was bone deep with fresh blood came out on cleaning. Swelling around the wound was present.
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> 3. 5 cms x 0.7 cm incised wound bone deep on front of skull starting just above the hair line of skull and one cm from the midline on the right side."

He also found injuries on the person of Gurmail Singh, Jarnail Singh, Karnail Singh and Surjan Singh. In cross case, the same doctor had examined Naresh Kumar, Ram Nath, Hukam Chand, Ram Lal, all accused in the present case and Laxmi and found injuries on them. PW5 Dr. Dalbir Singh, Assistant Professor, Forsenic Medicines, PGI Chandigarh conducted post mortem examination on the dead body of Sarwan Singh and in his

opinion, cause of death was oedema of brain due to extra-dural haematoma, sub-arachnoid haematomas, laceration of brain following fracture of skull after head injury.

After considering the evidence on record, the trial court held that the case of the prosecution was not established beyond reasonable doubt. Main reasons for the acquittal are:-

(i)Version given by PW11 Surjan Singh is about the dispute between Rattan Singh and Bhura alias Guru alias Ram Kumar accused on account of claim of Rattan Singh for the charges for the water used by Bhura @ Guru from the tubewell of Rattan Singh. Rattan Singh was never examined as a witness nor it was shown that fields of Rattan Singh were close by him and that Bhura @ Guru was taking water from the field of Rattan Singh and thus, motive for the occurrence was not established.

(ii)Version given by Surjan Singh about the manner of occurrence was not reliable. In examination in chief, he deposed about presence of Sucha Singh but in cross examination, he excluded his presence. Sucha Singh was not examined as a

witness. PW13 Gurmel Singh contradicted the version given by PW11 Sucha Singh about the place of occurrence. PW15 ASI Gurdial Singh who investigated the cross version did not pin point the place of occurrence.

(iii)Injuries on the accused persons were not explained by the prosecution. PW11 Surjan Singh stated that he had caused injuries in self defence by a small 'gandasi' while Rattan Singh caused injuries by a 'lathi'. He caused injuries to Ram Nath and Hukam Chand and Rattan Singh caused injuries to Ram Lal. According to medical evidence furnished by PW3 Dr. S.H.Sehgal PW3, Naresh Kumar had sustained four injuries,Ram Nath five injuries, Hukam Chand two injuries, Ram Lal four injuries and Smt.Laxmi one injury. The injuries found by the Medical Officer did not stand explained. The prosecution witnesses had, thus, intentionally suppressed the genesis of occurrence and their version did not inspire confidence.

We have heard learned counsel for the parties and perused the reasons for the acquittal.

There are two cross versions – one given by Surjan Singh PW attributing the commission of murder of Sarwan Singh, attempt of murder of Gurmel Singh, grievous hurt to Surjan Singh and hurt to Jarnail Singh and Karnail Singh by the respondents accused, the other version has been given by Naresh Pal, respondent No.1 in FIR No.21 dated 23.1.1992 against Joginder Singh and eight others attributing causing of injuries by Joginder Singh and eight others to Naresh Pal, which were found to be by fire arm and one of the injuries was in the chest, to Ram Nath which included two head injuries, to Hukam Chand, one of which was head injury and to Ram Lal, one of which was on the head, and injuries to Laxmi on the nose. It is clear that fire arm was used by the party comprising of Joginder Singh and others which has not been explained in the version of Surjan Singh. Surjan Singh has only mentioned causing of injuries to Hukma, Ram nath and Rattan Singh. No explanation has been given for the injuries caused to Naresh Pal, Ram Lal and Laxmi. Similarly, in the version given by Naresh Pal, causing of injuries to deceased Sarwan Singh, Gurmel Singh, Surjan Singh, Jarnail Singh and Karnail Singh has not been explained, even though, serious injuries have been found on the person of Sarwan Singh, Gurmel Singh and Surjan Singh apart from injuries on the person of Jarnail Singh and Karnail Singh. Both the sides have given coloured

versions. Against the rejection of version given by Naresh Pal against Joginder Singh and others, in judgment of the trial court given on the same day, neither the State nor the complainant has taken any proceedings. The view taken by the trial court while rejecting the cross version is also a possible view in the circumstances and the same cannot be held to be perverse.

Effect of prosecution witnesses suppressing the genesis of occurrence by not giving truthful version has been gone into in several decisions. Reference may be made to judgments of the Hon'ble Supreme Court in **Mohar Rai v. State of Bihar,** AIR 1968 SC 1281, **Puran Singh v. The State of Punjab**, AIR 1975 SC 1674, **Lakshmi Singh and others v. State of Bihar**, AIR 1976 SC 2263, **Vijayee Singh and others v. State of UP**, AIR 1990 SC 1459, **Ram Sunder Yadav and others v. State of Bihar,** AIR 1998 SC 3117, **Rajendra Singh and others v. State of Bihar,** AIR 2000 SC 1779 and **Takhaji Hiraji v. Thakore Kubersing Chamansing and others,** AIR 2001 SC 2328. It has been held that where prosecution does not explain injuries on accused, which are of serious nature and caused at the time of same occurrence and evidence consists of interested or partisan witnesses, evidence of witnesses will become unreliable. Of course, where evidence is clear, cogent and creditworthy and the court can distinguish the truth from falsehood, mere non

explanation of injuries on an accused cannot be a sole basis to reject the testimony of prosecution witnesses.

In the present case, version of the witnesses cannot be held to be reliable and becomes subject to serious doubt on account of injuries on the accused having not been explained. Taking this fact alongwith other discrepancies pointed out by the trial court,the view taken by the trial court that the case of the prosecution is not proved beyond reasonable doubt, is a possible view and is not liable to be set aside merely because a different view can be taken.

Scope of appeal against acquittal has been gone into by the Hon'ble Supreme Court, inter-alia, in ***Jaswant Singh v. State of Haryana,*** AIR 2000 SC 1833, wherein it was observed:-

> "21**.** The principle to be followed by appellate courts considering an appeal against an order of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the order is clearly unreasonable it is a compelling reason for interference (see *Shivaji Sahabrao Bobade* v. *State of Maharashtra,* (1973 2 SCC 793: AIR 1973 SC 2622: (1973 Cri LJ 1783)). The principle was elucidated in *Ramesh Babulal Doshi* v. *State of Gujarat,* (1996) 9 SCC 225: 1996 AIR SCW 2438: AIR 1996 SC 2035 (1996 Cri LJ 2867):
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> > "While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court

holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and then only reappraise the evidence to arrive at its own conclusions."

In view of above, the appeal is dismissed.

(Adarsh Kumar Goel)
Judge

(S.N.Aggarwal)
Judge

May 18, 2007
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